

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED:

MILLENNIUM PIPELINE COMPANY, L.L.C.,

*Plaintiff,*

-vs-

CERTAIN TEMPORARY EASEMENTS IN 322  
SLEEPY VALLEY ROAD, TOWN OF WARWICK,  
ORANGE COUNTY, NEW YORK, S.B.L. No. 31-1-17,  
BREAKAWAY TRAILS, INC., John Doe, et al., and  
Unknown Owners, *Et al.*,

*Defendants.*

Civil Action No.  
07 CV 5815 (CM) (MDF)

STIPULATION AND CONSENT  
ORDER GRANTING MOTION  
FOR A PRELIMINARY  
INJUNCTION AND  
ESTABLISHING BOND FOR THE  
BREAKAWAY TRAILS, INC.  
PROPERTY

### RECITALS

- A. Plaintiff, Millennium Pipeline Company, L.L.C. ("Millennium"), having filed a complaint on June 20, 2007, seeking, *inter alia*, an order for temporary construction easements in addition to the permanent easement it already possesses with respect to the real property owned by Defendant, Breakaway Trails, Inc. ("Breakaway");
- B. Millennium having also filed a motion for a preliminary injunction, pursuant to Federal Rules of Civil Procedure ("FRCP") 65(a), seeking an order permitting Millennium to immediately enter upon the real property owned by Breakaway, known as 322 Sleepy Valley Road, Town of Warwick, County of Orange, New York, S.B.L. No. 31-1-17 (the "Breakaway Property") for the purpose of commencing work associated with the construction of a natural gas pipeline to effectuate a public project approved by the Federal Energy Regulatory Commission ("FERC") (the "Project");
- C. In support of said motion, Millennium filed an Affidavit of Darryl Colosi, sworn to on June 18, 2007 ("June 18, 2007 Affidavit") and a Memorandum of Law, dated June 18, 2007 ("June 18, 2007 Memorandum");
- D. In opposition to said motion, Breakaway filed an Affirmation of Neal D. Frishberg, dated July 12, 2007 and a Memorandum of Law, dated July 12, 2007;
- E. In reply and in further support of that motion Millennium filed a Reply Affidavit of Darryl Colosi, sworn to on July 16, 2007 and a Reply Memorandum of Law, dated July 16, 2007;
- F. The Court having scheduled an oral argument for said motion on July 16, 2007 and a hearing to determine a bond for July 30, 2007;

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G. the parties having reached agreement resolving both the motion for injunctive relief and the amount for a bond;

**IT IS STIPULATED, AGREED AND ORDERED, that:**

1. Plaintiff's motion for injunctive relief pursuant to Federal Rules of Civil Procedure ("FRCP") 65(a), including immediate possession of and entry upon the requested temporary construction easements and the existing permanent easement to commence work associated with the construction of and to construct a natural gas pipeline, relating to the real property owned by Breakaway (known as 322 Sleepy Valley Road, Town of Warwick, County of Orange, New York, S.B.L. No. 31-1-17 (the "Breakaway Property")), is granted and shall remain in effect for the duration of the construction and testing of said pipeline and restoration of the Breakaway Property following pipeline construction and testing, but not later than December 21, 2009 (unless otherwise extended by Federal Energy Regulatory Commission).
2. Prior to said possession and entry on the Breakaway Property, Millennium shall post a bond in the amount of \$100,000, the form, content and surety thereof shall be satisfactory to counsel for Breakaway, whose consent shall not be unreasonably withheld or delayed.
3. Proof of said bond shall be filed with the Court and served upon Defendant, Breakaway Trails, Inc. and said bond shall be maintained for the duration of the construction and testing of said

pipeline and restoration of the Breakaway Property.

FOR: PLAINTIFF

FOR: DEFENDANT, BREAKAWAY TRAILS,  
INC.

*By its attorneys,*  
HISCOCK & BARCLAY LLP

*By its attorneys*  
Law Offices of Neal D. Frishberg

By: 

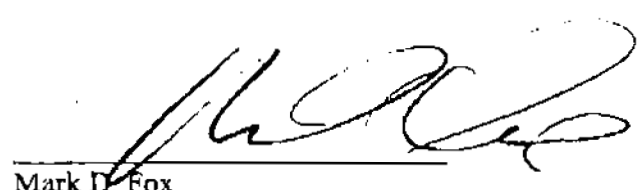
By: 

Darryl J. Colosi (DJC 2929)  
1100 M&T Center  
Three Fountain Plaza  
Buffalo, New York 14203-1414  
(716) 566-1553  
Facsimile: (716) 846-1239

Neal D. Frishberg (NDF 2682)  
One Harriman Square  
P.O. Box 124  
Goshen, New York 10924  
(845) 294-8634  
Facsimile: (845) 294-7889

IT IS SO ORDERED.

Dated: July 18, 2007  
White Plains, New York

  
Mark D. Fox  
United States Magistrate Judge

MARK D. FOX  
United States Magistrate Judge  
Southern District of New York

7/18/07  
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